

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5376 of 1998

with

SPECIAL CIVIL APPLICATION NO.5970 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

NIZAMUDDIN MEHBOOB BHAI SHEIKH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
Mr.Gohil, A.G.P. for Respondent No. 1, 2, 3
in Sp.Civil Application No.5376/98

YUNISHBHAI MUNSHIBHAI SHAIKH

V/S.

STATE OF GUJARAT & ORS.

Appearance :

Mr.HR PRAJAPATI for petitioner
Mr.Gohil, A.G.P. for Respondents No.1,2 &3
in Sp.Civil Application No.5970/98

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/02/99

ORAL COMMON JUDGEMENT

1. These two writ petitions under Article 226 of the Constitution of India arising out of the same incident and identical detention order, can be disposed of by a common order.

2. Brief facts giving rise to these petitions are that the two petitioners were directed to be preventively detained by the Commissioner of Police, Ahmedabad city under his order dated 29.6.1998 under Section 3(2) of the Prevention of Anti-social Activities Act (for short 'PASA'). Their prayer in the two writ petitions is that the detention order be quashed and they be released from illegal detention.

3. It appears from the perusal of the grounds of detention in both the writ petitions that on account of registration of a single offence against the petitioners under various sections of the Bombay Prohibition Act and on the basis of statements of three confidential witnesses the detaining Authority arrived at subjective satisfaction that the petitioners of the two writ petitions are bootleggers and their activities were prejudicial for maintenance of public order. Accordingly the impugned order was passed which is challenged on the sole ground that the activities of the petitioners cannot be said to be prejudicial for maintenance of public order.

4. From the grounds of detention it can be said that the petitioners are bootleggers. One case was registered against them under the Bombay Prohibition Act and three witnesses have also stated about bootlegging activities of the two petitioners. However, a bootlegger cannot be detained preventively unless his activities are found to be prejudicial for maintenance of public order. The registered offences under the Bombay Prohibition Act cannot be pressed in service for observing that the activities of the petitioners in the only case were prejudicial for maintenance of public order.

5. Coming to the statements of three confidential witnesses leaving aside the improbability in their statements even if the face value of these statements is considered it can safely be concluded that these incidents were nothing, but incidents relating to maintenance of law and order and not incidents prejudicial for maintenance of public order. Since identical narration of incidents has been given by the

three witnesses it is unnecessary to reproduce and burden the length of this judgment.

6. Since the activities of the petitioners cannot be said to be prejudicial for maintenance of public order and there was no satisfactory material to come to this subjective satisfaction the impugned orders of detention are rendered illegal.

7. The result, therefore, is that the two petitions succeed and are hereby allowed. The orders of detention against the two petitioners passed on 29.6.1998 are hereby quashed. The petitioners shall be enlarged forthwith unless wanted in some other case.

sd/-

Date : February 04, 1999 (D. C. Srivastava, J.)

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